

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
FAMILY BROADCASTING, INC) EB Docket No. 01-39
)
Order to Show Cause Why the Licenses for)
Stations WSTX(AM) and WSTX-FM,)
Christianstead, U.S. Virgin Islands,)
Should Not Be Revoked)

To: Chief Administrative Law Judge
Richard L. Sippel

ENFORCEMENT BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PRELIMINARY STATEMENT

1. By *Order to Show Cause and Notice of Opportunity for Hearing*,¹ the Commission commenced this proceeding to determine whether the captioned broadcast licenses held by Family Broadcasting, Inc. ("FBI") should be revoked.

2. In paragraph 22 of the *OSC*, the Commission specified the following issues for resolution at hearing:

- (a) To determine whether Family Broadcasting, Inc. misrepresented facts to and/or lacked candor with the Commission in its statements regarding the relocation of WSTX-FM's transmitter from its authorized site in violation of Section 73.1015 of the Rules;
- (b) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Sections 1.89 and/or 73.1015 of the Rules by failing to respond to official Commission correspondence and inquiries;
- (c) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Sections 73.1350(a), 73.1560(a), 73.1560(b) and/or 73.1690(b)(2) of

¹ *Order to Show Cause and Notice of Opportunity for Hearing*, 16 FCC Rcd 4330, *recon. denied*, 16 FCC Rcd 12810 (2001) ("OSC").

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the Rules by operating WSTX(AM) and WSTX-FM at variance from the terms of their authorizations;

(d) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Section 73.49 of the Rules by failing to enclose WSTX(AM)'s antenna within an effective locked fence;

(e) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Section 11.35 of the Rules by failing to install and maintain operational EAS equipment for WSTX(AM) and WSTX-FM;

(f) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Section 73.3526 of the Rules by failing to maintain public inspection files for WSTX(AM) and WSTX-FM;

(g) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Family Broadcasting, Inc. is basically qualified to be or remain a Commission licensee; and

(h) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the licenses for WSTX(AM) and/or WSTX-FM should be revoked.

3. Paragraph 23 of the *OSC* placed the burdens of the introduction of evidence and of proof on the Enforcement Bureau.

4. By paragraph 24 of the *OSC*, the Commission directed that, regardless of the resolution of those issues, the presiding administrative law judge (the "Presiding Judge") shall also determine, pursuant to section 503(b)(3)(A) of the Act, 47 U.S.C. § 503(b)(3)(A), and section 1.80 of the Rules, 47 C.F.R. § 1.80, whether an Order of Forfeiture in an amount not to exceed two hundred seventy five thousand dollars (\$275,000) should be issued against FBI for willfully and/or repeatedly violating sections 1.89, 11.35, 73.49, 73.1015, 73.1350(a), 73.1560(a), 73.1560(b), 73.1690(b)(2) and/or 73.3526 of the rules.

5. Following the filing of cross motions for summary decision, the Presiding Judge resolved all issues against FBI and ordered that the licenses for Stations

WSTX(AM) and WSTX-FM be revoked.² In so ruling, he determined that the proposed transfer of control of FBI from its principal stockholders, Gerard Luz A. James (“Luz James”), and his wife, Asta James, to their four adult children was not permissible.³ The Presiding Judge did not impose a forfeiture.⁴

6. FBI sought Commission review of the *SD*. By *Memorandum Opinion and Order and Hearing Designation Order*,⁵ the Commission granted, in part, FBI’s Application for Review. Specifically, the Commission affirmed the Presiding Judge’s conclusion that revocation of the station licenses was warranted if Luz James remained in control of FBI. Nevertheless, the Commission set aside the *SD* to the extent that it revoked the captioned stations’ licenses, concluding that, in light of the proposed transfer of the control of FBI from Luz and Asta James to their adult children, revocation should not have occurred without consideration of the issue of whether grant of the Transfer Applications would serve the public interest. Specifically, in light of its affirming the *SD*’s conclusion that FBI had misrepresented facts and/or lacked candor and had violated numerous Commission rules in its operation of its stations, the Commission stated:

... in the absence of record evidence affirmatively demonstrating the proposed transferees’ future independence and ability to operate the stations in accordance with all statutory and regulatory requirements, Mr. Luz James’s removal as officer, director and principal stockholder does not moot the disqualifying impact of his

² *Family Broadcasting, Inc.*, Summary Decision of Administrative Law Judge Richard L. Sippel, 16 FCC Rcd 15619 (ALJ 2001) (“*SD*”).

³ *SD*, 16 FCC Rcd at 15635, ¶ 46. *See also* BTC-20010315AAJ and BTCH-20010315AAK (collectively, the “Transfer Applications”).

⁴ *SD*, 16 FCC Rcd at 15635, ¶ 49.

⁵ *Family Broadcasting, Inc.*, Memorandum Opinion and Order and Hearing Designation Order, 17 FCC Rcd 6180 (2002) (“*MO&O/HDO*”).

intentional misrepresentation and cavalier disregard of basic public interest responsibilities.⁶

7. Accordingly, the Commission remanded the proceeding to the Presiding Judge for resolution of the following issues:

- (a) To determine whether, if the transfer of control applications are approved, Family Broadcasting Inc. will be influenced or controlled by Gerard Luz James;
- (b) To determine whether transferors Gerard and Asta Luz James, as either creditors or debtors of Family Broadcasting Inc. or in any other capacity, will benefit, directly or indirectly, if the transfer of control applications are approved;
- (c) To determine whether transferee Barbara James-Petersen, in her capacity as general manager from July 1998 until March 2001, misrepresented facts and or lacked candor with the Commission concerning the operation of WSTX(AM) and WSTX-FM;
- (d) To determine whether transferee Barbara James-Petersen, in her capacity as general manager from July 1998 until March 2001, willfully or repeatedly operated WSTX(AM) and WSTX-FM at variance from the terms of their licenses;
- (e) To determine whether transferee Barbara James-Petersen, in her capacity as general manager from July 1998 until March 2001, willfully or repeatedly violated Sections 1.89 and/or 73.1015 of the Rules by failing to respond to official Commission correspondence and inquiries;
- (f) To determine whether transferee Barbara James-Petersen will operate WSTX(AM) and WSTX-FM independently of any control or influence from transferors Asta and Gerard Luz James;
- (g) To determine whether transferee Barbara James-Petersen will have sufficient financing and managerial capacity to ensure enclosure within an effective locked fence of WSTX(AM)'s antenna as required by Section 73.49;
- (h) To determine whether transferee Barbara James-Petersen will have sufficient financing and managerial capacity to ensure the installation and maintenance of operational EAS equipment for Stations WSTX(AM) and WSTX-FM as required by Section 11.35;
- (i) To determine whether Family Broadcasting, Inc. under the direction of

⁶ *Id.*, 17 FCC Rcd at 6187, ¶25.

transferee Barbara James-Petersen will operate WSTX(AM) and WSTX-FM in accordance with the Rules, the Communications Act, and the terms of their authorizations as required by Sections 73.1350(a), 73.1560(a), 73.1560(b), and 73.1690(b); and

- (j) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether approval of the transfer of control application will serve the public interest.

8. The Commission imposed the burdens of proceeding and proof as to each issue upon FBI, and stated that, in the event that issue (j) was resolved in a manner adverse to FBI, revocation of the licenses for Stations WSTX(AM) and WSTX-FM would result.

9. Following the release of the *MO&O/HDO*, but before testimony was taken, FBI filed a Petition for Extraordinary Relief, in which it invoked the Commission's Minority Distress Sale Policy,⁷ pursuant to which FBI sought the approval of its proposed assignment of the captioned stations' licenses to Caledonia Communication Corporation, an entity that it claimed to be minority-controlled, and thus a qualified distress sale purchaser.⁸ However, by letter decision, the Chief, Audio Division, Media Bureau, dismissed the FBI/Caledonia applications seeking approval of those assignments.⁹

10. The Presiding Judge conducted an evidentiary hearing on the issues designated in the *MO&O/HDO* in Washington, D.C. on March 16, 2004. Both FBI and the Bureau

⁷ See *Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 983 (1978). See also *Commission Policy Regarding Advancement of Minority Ownership of Broadcasting*, 92 FCC 2d 849, 851 (1982).

⁸ See BAL-20030304AAX and BALH-20030304AAW (the "FBI/Caledonia assignment applications").

⁹ See Letter to Daniel A. Huber, Esq. from Peter H. Doyle, Chief, Audio Division, Media Bureau (Oct. 27, 2003) ("Chief's Letter"). Both FBI and Caledonia have sought Commission review of the Chief's Letter pursuant to 47 C.F.R. § 1.115.

proffered witness testimony and documentary exhibits.¹⁰ Following the hearing, he received into evidence two post-hearing exhibits proffered by the Bureau.¹¹ After repeatedly staying further procedural dates in light of the pendency before the Commission of pleadings relating to the proposed distress sale,¹² the Presiding Judge established a deadline of April 4, 2005, for the submission of proposed findings of fact and conclusions of law, in the event that the Commission had not otherwise disposed of the case.¹³ To date, the Commission has not ruled on the FBI and Caledonia applications for review of the Media Bureau's letter dismissing the FBI/Caledonia assignment applications, nor has it stayed the instant proceeding.

II. PROPOSED FINDINGS OF FACT

A. OVERVIEW

11. The *MO&O/HDO* assigned the burden of proof to FBI on each of the issues designated therein. Accordingly, FBI is required to demonstrate, *inter alia*, that, if the Transfer Applications are granted, Luz James will not influence or control it and that Barbara James-Petersen, his daughter, will operate the stations independent of any control or influence from her father or mother. In addition, FBI must show that Ms. James-Petersen, in her capacity as General Manager of the stations from July 1998 to

¹⁰ Hereafter, each of FBI's exhibits will be referred to as (FBI Ex. #) and each of the Bureau's exhibits will be referred to as (EB Ex. #). Hearing transcript pages will be referred to as (Tr. #).

¹¹ See *Order*, FCC 04M-11 (rel. Mar. 31, 2004).

¹² See *Order*, FCC 04M-16 (rel. Apr. 30, 2004); *Order*, FCC 04M-21 (rel. July 1, 2004); *Order*, FCC 04M-29 (rel. Oct. 1, 2004); *Order*, FCC 04M-40 (rel. Dec. 6, 2004).

¹³ See *Order*, FCC 04M-40 (rel. Dec. 6, 2004), *erratum* (Jan. 12, 2005).

March 2001, did not misrepresent facts or lack candor concerning the stations' operations or willfully or repeatedly violate sections 1.89 and/or 73.1015 of the Commission's rules by failing to respond to official Commission correspondence and inquiries. Finally, FBI must demonstrate that, under Ms. James-Petersen's direction, it will operate the captioned stations in accordance with the Communications Act of 1934, as amended (the "Act"), the Commission's rules, and the terms of the stations' authorizations. For the following reasons, FBI has failed to meet its burdens of proof on many of these issues.

Consequently, the Bureau submits that grant of the transfer of control applications will not serve the public interest and that the stations' licenses should be revoked.

B. BACKGROUND¹⁴

12. FBI acquired Stations WSTX(AM) and WSTX-FM in September 1990. (EB Ex. 2, p. 1; EB Ex. 3, p. 1) According to Ms. James-Petersen, Luz James bought the stations because he had worked at them during the 1950s. (EB Ex. 4, p. 81) Ms. James-Petersen testified that, in that transaction, FBI obtained little more than the stations' licenses. (Tr. 121)

13. Prior to FBI's acquisition of the stations, Ms. James-Petersen resided in Maryland with her husband and three children. (Tr. 121) She is a college graduate and received a J.D. from Howard University. (EB Ex. 4, p. 7) Shortly after FBI became the licensee of the stations, Ms. James-Petersen and her three children moved to St. Croix, where the facilities are located, to live with her parents, at her father's urging. (Tr. 151) Ms. James-Petersen testified that she moved back to St. Croix "with a heavy heart"

¹⁴ To provide the overall context of this case, we set forth a detailed, chronological statement of the facts.

because she knows how “hard-headed” her father can be. (EB Ex. 9, 55) Nonetheless, since returning there, she has continued to reside with her parents. (Tr. 150) Luz and Asta James do not charge Ms. James-Petersen and her children any rent for staying with them. (EB Ex. 4, p. 90; EB Ex. 5, p. 147)

14. As of the time of the hearing, Ms. James-Petersen’s three children were 23, 17 and 14. (Tr. 163) The eldest is a student at Grambling. (Tr. 157) The youngest is and has been severely asthmatic and suffers from hypertension. (Tr. 158) Ms. James-Petersen currently has no health insurance; her parents pay for her son’s prescription medications. (Tr. 158, 163)

15. FBI paid \$525,000 for the stations, notwithstanding the fact that the facilities had been severely damaged by Hurricane Hugo less than a year prior to the transaction. (FBI Ex. 1, pp. 1-2; Tr. 121) Ms. James-Petersen had no role in the stations’ purchase. (Tr. 120) To help pay the stations’ purchase price, Luz James obtained a bank loan, which was secured by one or more properties that he and/or his wife owned. (EB Ex. 5, pp. 28-31; Tr. 102) Both Ms. James-Petersen and Luz James testified that the bank had foreclosed on one of the properties and that the matter is now in court. (Tr. 113; EB Ex. 5, pp. 28-31) Although Ms. James-Petersen testified that the foreclosure had satisfied the entirety of FBI’s debt to the bank, she also stated that one of her parents’ other properties may still be subject to a security interest. (Tr. 119)¹⁵

16. FBI also raised money by selling shares of stock to some 40 to 50 of Luz and

¹⁵ *But see* Tr. 102 (Ms. James-Petersen also testified that she has no idea whether FBI has paid off whatever it borrowed in order to buy the radio stations.) *See also* EB Ex. 9, pp. 221-22 (Luz James tells her only what he wants her to know; she has asked him but has not received documents concerning the litigation).

Asta James' family and neighbors, some of which have sought and obtained refunds of the money paid for their shares; most have not. (FBI Ex. 3, p. 1; EB Ex. 5, pp. 125-43) Ms. James-Petersen does not know if FBI owes its shareholders any money. (EB Ex. 4, p. 43) Those individuals collectively hold approximately seven percent of FBI's stock. (Tr. 129) Although FBI issued shares of stock to each such person, it apparently never formally issued shares to Luz James or his wife, who hold the remaining stock in FBI. (Tr. 132-33) It also appears that FBI has raised money through shareholder loans. In this regard, its 1996 and 1997 draft corporate tax returns for FBI indicate that, as of the closing date of the 1997 return, more than \$400,000 in "Loans from Stockholders" appears. (EB Ex. 4, pp. 39, 42, 137, 153) Ms. James-Petersen does not know to whom these obligations may be owed. (*Id.*, pp. 39, 42)

17. Ms. James-Petersen first worked at the stations from September 1990 to August or September 1992. She testified that, although she held the title of General Manager, she functioned as a secretary because her father did everything at the stations. (Tr. 152) Ms. James-Petersen testified that, during her 1990-1992 tenure at the stations, FBI paid her sporadically. (EB Ex. 4, p. 68) She stated that, in 1992, she left her position with the stations because she did not feel comfortable with the role her father had given her. (EB Ex. 9, p. 10) After leaving the stations, Ms. James-Petersen worked for her brother, then-Senator Gerard Luz James, Jr., from 1993 to 1997, first as a researcher and later as his Chief of Staff. (EB Ex. 4, p. 7; EB Ex. 7, p. 18; Ex. 9, pp. 10-11) Ms. James-Petersen testified that, before she returned to the stations, she conducted legal research for her father and also took care of her son. (EB Ex. 9, pp. 11-12)

18. While Ms. James-Petersen was working for her brother, FBI was evicted from its authorized site for Station WSTX-FM for non-payment of rent. (EB Ex. 2, p. 5; EB Ex. 3, p. 3) During the mid-1990s, the station was periodically silent, and its license was renewed by the Commission in 1997 only after a hearing.¹⁶ (EB Ex. 2, pp. 47-48; EB Ex. 3, p. 4) Upon resumption of station broadcast operations in January 1997, FBI simulcast that station with Station WSTX(AM) from the latter's site, an operation that was not in accordance with the terms of Station WSTX-FM's license. (EB Ex. 2, pp. 8, 72; EB Ex. 3, p. 5; EB Ex. 8, p. 64)

19. FCC Resident Agent Reuben Jusino inspected FBI's two stations twice in 1997. On both occasions, he found that both Station WSTX(AM) and Station WSTX-FM were operating in a manner at significant variance with their authorized parameters. Specifically, he found that Station WSTX-FM was operating from an unauthorized site¹⁷ and at 100 Watts (0.2 percent of its authorized power of 50,000 Watts) and that Station WSTX(AM) was operating at 2,800 Watts (56 percent of its authorized power of 5,000 Watts), with an antenna that was 36 meters high (approximately one-third of its authorized height of 106.5 meters). Agent Jusino also found that FBI had failed to have operable EAS/EBS equipment installed and had failed to enclose its antenna/radiator within an effective locked fence. (EB Ex. 1, pp. 1-2; EB Ex. 2, pp. 50-55)

20. Agent Jusino conducted both inspections with Luz James. After the first inspection, Agent Jusino sent official correspondence to Luz James which advised FBI of

¹⁶ See *Family Broadcasting, Inc.*, 11 FCC Rcd 18700 (ALJ 1997).

¹⁷ As noted in paragraph 18, *supra*, FBI had been evicted from its authorized site several years earlier. (FBI Ex. 1, p. 2)

the violations and included two checklists, one for each station, to assist FBI report back to Agent Jusino about its progress in bringing the facilities into compliance. (EB Ex. 1, p. 2; EB Ex. 2, p. 49) Although Luz James acknowledged to Agent Jusino that he had received this official correspondence, he did not submit a progress report, as requested by the Agent. (EB Ex. 1, p. 2) After the second inspection, Agent Jusino prepared two Notices of Violation (the "NOVs"), which he sent to FBI by certified mail. (*Id.*, p. 3; EB Ex. 2, pp. 50-55) Although FBI received the NOVs, Agent Jusino did not receive a reply to either NOV. (EB Ex. 1, p. 3; EB Ex. 2, p. 10; EB Ex. 3, p. 6)

C. OPERATION OF THE STATIONS SINCE 1998

21. In June or July 1998, Ms. James-Petersen returned to the stations to serve as their General Manager. (EB Ex. 4, p. 7; Tr. 134) According to Ms. James-Petersen, in this position, she oversaw the daily operation of the stations and ensured that personnel reported on time and that commercial spots were aired as scheduled. (EB Ex. 9, p. 9) She testified that, although she held the title of General Manager, her father "was calling all of the shots." (*Id.*, pp. 8-9) Ms. James-Petersen's return to the stations followed a meeting involving herself, her brother, Luz James, Jr., Alva Clarke and another person, at which all agreed that Luz James should reduce his involvement in the operation of the stations. (EB Ex. 8, pp. 66-70; EB Ex. 9, pp. 58-60, 62) According to Ms. James-Petersen, to that end, Luz James agreed to reduce his role to that of a staff disc jockey, but nothing more. (EB Ex. 9, p. 63)

22. On September 8, 1998, Agent Jusino returned to conduct another inspection of the stations. (EB Ex. 1, p. 3) According to him, he was met by Ms. James-Petersen, who identified herself as Luz James's daughter and who informed him that she was the

stations' new General Manager and would be assuming the day-to-day operations of the stations. (*Id.*) Agent Jusino informed her that he had been to the stations previously and had found problems. (Tr. 135) Luz James briefly joined them and showed Agent Jusino some sales literature that was apparently related to the stations' operating power. (EB Ex. 1, p. 3)

23. Ms. James-Petersen understood from her conversation with Agent Jusino that the stations were operating well below authorized power. (Tr. 138) In this regard, Agent Jusino pointed out that the AM station was then operating at 2,250 Watts (45 percent of its authorized power of 5,000 Watts), with a meter antenna situated 36 meters in height, instead of the authorized 106.5 meters, while the FM station was still operating at 100 Watts (0.2 percent of its authorized power), from an unauthorized site. (EB Ex. 1, p. 4) In addition, the EAS equipment had been powered down and apparently not in operation since July 17, 1998, and the chain link fence that surrounded the AM antenna had a hole in it. (*Id.*, pp. 3-4)

24. On April 13, 2000, Agent Jusino again inspected the stations in the presence of Ms. James-Petersen, who identified herself to him as the stations' General Manager. (EB Ex. 1, p. 4; EB Ex. 4, p. 62) Luz James had not been at the stations for the previous three months, having undergone triple bypass surgery in January 2000. (Tr. 156; EB Ex. 9, pp. 9-10) He had also been away from the stations for several months during 1998 and 1999 because of his serious heart condition. (EB Ex. 5, p. 5) According to Agent Jusino, Ms. James-Petersen informed him that funds that had been earmarked for repairing the AM station's tower had been used for her father's surgery. She also told Agent Jusino that she and her brothers were going to take over operation of the stations. (EB Ex. 1, p. 5)

25. During the inspection, Agent Jusino found that the EAS equipment was malfunctioning, although Ms. James-Petersen told him that she had recently called an engineer to fix the problem. He also found that Station WSTX-FM continued to operate at 0.2 percent of authorized power from the same unauthorized site, while Station WSTX's power had been reduced to 325 Watts, 6.5 percent of its authorized power. Agent Jusino also found that the opening in the antenna fence had not yet been repaired. (EB Ex. 1, p. 5)

26. On May 1, 2000, Agent Jusino issued NOVs to FBI, which detailed these violations at both stations. (EB Ex. 2, pp. 76-81) He sent the NOVs to FBI by certified mail and by facsimile. Agent Jusino testified that, although Ms. James-Petersen's signature appears on the certified mail return receipts, he did not receive a response from FBI to the NOVs. (EB Ex. 1, p. 6) According to Ms. James-Petersen, she did not realize until receipt of the NOVs that Station WSTX-FM was not operating at its authorized site or at its authorized power. (EB Ex. 4, pp. 58-59)

27. On May 15, 2000, FBI requested special temporary authorizations ("STAs") for the stations to authorize their current, nonconforming operation. Luz James prepared and signed the letters. (EB Ex. 2, pp. 15-16, 82-89; EB Ex. 3, p. 9) Following the issuance of STAs to FBI by the then-Mass Media Bureau (EB Ex. 2, pp. 90-93), the Enforcement Bureau sent a letter of inquiry to FBI, which focused on possible misrepresentations contained in the STA requests. (*Id.*, pp. 94-96) A copy of the Bureau's letter was sent by facsimile to Ms. James-Petersen. (*Id.*, p. 97) She received it but did not prepare a response. (*Id.*, p. 17; EB Ex. 3, p. 10; EB Ex. 4, pp. 66-67)

According to Ms. James-Petersen, Luz James was supposed to take care of responding to the Bureau's letter. (EB Ex. 9, p. 52).

28. The Commission released the *OSC* in this proceeding inquiring into alleged wrongdoing by FBI on February 8, 2001. The following month, Luz James resigned as President of FBI, and was succeeded in the position by Ms. James-Petersen. (EB Ex. 4, p. 32) Ms. James-Petersen's three younger brothers, Luz James, Jr., a St. Croix resident, Emmeth James, a New York resident, and Dr. Kelsey James, a physician who lives in Kentucky, are FBI's other corporate officers. (EB Ex. 5, pp. 13-14; EB Ex. 7, p. 8; EB Ex. 9, pp. 333-36; Tr. 104) However, none of Ms. James-Petersen's brothers has anything to do with the operation of the stations, although Luz James, Jr. has occasionally contributed money to assist with the stations' expenses. (EB Ex. 4, pp. 33-35; EB Ex. 7, pp. 13, 19, 34; Tr. 96, 105)

29. Although Ms. James-Petersen became President of FBI in March 2001, she was frequently away from the stations during that year. From March 1 to April 10, 2001, she was in the D.C. area, following her husband's heart attack. (EB Ex. 4, pp. 8-9) She was again in the D.C. area in May 2001 for her deposition and remained away from St. Croix at least through August 2001, and then she was back in D.C. in September 2001. (EB Ex. 9, pp. 149, 209-10) On occasion, she has also had to travel to the D.C. area because of her son. (EB Ex. 4, p. 8; EB Ex. 5, p. 21) Ms. James-Petersen plans to return to the D.C. area eventually because of its proximity to Children's Hospital. (Tr. 159)

30. Ms. James-Petersen testified during her January 2003 deposition that, when she is in St. Croix, she goes to the stations every day. (EB Ex. 9, p. 207) She testified, "I'm there seven days a week at least 18 hours a day. When I'm not there, I'm at home."

(*Id.*, p. 140) During the hearing, however, Ms. James-Petersen testified that she works at the stations between six to ten hours a day, seven days a week. (Tr. 185) Moreover, she also testified during the hearing that she suffers from migraine headaches, which kept her away from the stations for most of the time between November 2003 and March 2004. (Tr. 167) Ms. James-Petersen testified that, when she is not at the stations, their Program Director and Production Manager, Alva Clarke, handles the stations' business. (EB Ex. 9, p. 210; Tr. 169)

31. Mr. Clarke testified during his January 2003 deposition that he would see Ms. James-Petersen roughly three or four times a week. (EB Ex. 8, p. 17) According to Mr. Clarke, his working hours are Monday through Friday, from 8:00 a.m. to 4:30 p.m., although, on occasion, he will stay later and/or come in on weekends. (*Id.*, pp. 17-18) Mr. Clarke testified that, in his experience, Ms. James-Petersen was present at the stations between six to eight hours on those days when she was there. (*Id.*, pp. 19-20)

32. In response to issue (a) in the *MO&O/HDO*, Ms. James-Petersen testified in February 2003:

Subsequent to my designation as president of Family Broadcasting, Inc., in March of 2001, Gerard Luz A. James has been only minimally involved in the operations of the stations. His sole involvement has been to conduct a religious radio program on the weekends and to drive an employee to work. I expect that to continue to be the case. (FBI Ex. 2, p. 1)

33. Ms. James-Petersen has acknowledged that her father, Luz James, is "extremely headstrong." (EB Ex. 9, p. 56) She also allowed that, although he has been "a lot easier to deal with" since November 2002, "he can be a slick one." (*Id.*, p. 79) Ms. James-Petersen has also described her father as "a male chauvinist" and observed, with respect to his willingness to abide by the advice of her brother, a physician, that her father

is "impossible." Tr. 131, 157. She further acknowledged in January 2003 that employees at the stations still called Luz James, even if she was present at the stations. (EB Ex. 9, p. 60) Luz James asserted in his November 2002 deposition that "in my family, I control my family." (EB Ex. 5, p. 175)

34. Luz James goes to the stations every weekend to work as an announcer. Ms. James-Petersen testified that, during the twelve-month period preceding the hearing, he was at the stations for an hour and a half on Saturday mornings, five hours on Saturday afternoons/early evenings and six hours on Sunday evenings/nights. (Tr. 89-90. *See also* EB Ex. 5, p. 75) According to her, Luz James's job is to play music or the program tapes that are at the stations. However, she acknowledged that, during the four months preceding the hearing, he was also at the stations to play music from 6:00 p.m. to 9:00 p.m. on Tuesdays and Thursdays. (Tr. 91-92) Ms. James-Petersen testified that her father has not hired or fired anyone since autumn 2001, when he fired an individual who refused to read the news. (Tr. 106-09) Finally, Ms. James-Petersen acknowledged that she has used Luz James as a salesman. (Tr. 155-56)

35. Ms. James-Petersen maintains payroll records and advertising contracts for the stations at the Luz James family home. (Tr. 87) Records are maintained in a small filing cabinet and in some boxes. (Tr. 88) The cabinet and boxes are not secured by locks. (Tr. 89) As of January 2003, FBI's bills were sent to a post office box for which both Ms. James-Petersen and Luz James had keys. (EB Ex. 9, p. 240) However, Ms. James-Petersen denied that her father maintained any records for FBI. (Tr. 101)

36. Ms. James-Petersen testified that her parents and her brother, Luz James, Jr., supplement the stations' income as needed to meet its obligations. (Tr. 95-96) She also

acknowledged that Luz James will assist with the payroll "if I fall short." She testified that Luz James will usually ask her if she has enough money to cover the payroll. (Tr. 98) Ms. James-Petersen has also stated that Luz James has paid an electrical or telephone bill and then given her the receipts. (EB Ex. 9, pp. 163)

37. The stations' programming consists of calypso and West Indian music and gospel, catering to senior citizens. (Tr. 92) Certain programmers are charged substantially less for airtime than are regular commercial programmers, a practice which has remained unchanged since FBI became the licensee. (Tr. 93-94; EB Ex. 5, pp. 65) Luz James has no intention of changing this practice. (EB Ex. 5, p. 71)

38. In response to issue (b) in the *MO&O/HDO*, Ms. James-Petersen testified in February 2003:

Gerard Luz A. James and Asta K. James have waived any right to receive any money owed to them from Family Broadcasting, Inc., once the pending application for transfer of control is granted. Gerard Luz A. James and Asta K. James are not debtors of Family Broadcasting, Inc. (FBI Ex. 2, p. 1)

39. As noted in paragraph 16, *supra*, it appears that FBI may owe hundreds of thousands of dollars to stockholders because of loans made to the corporation. (See EB Ex. 4, pp. 137, 153) During the hearing, Ms. James-Petersen testified that the last federal tax return filed for the company was for 1997 or 1998 but that such returns were to be brought current soon after the hearing (Tr. 99); however, FBI never supplemented the record with those returns. Ms. James-Petersen also testified that, as of January 2003, Luz James still had information concerning FBI's debt that he had not shared with her (EB Ex. 9, p. 170). At the hearing, she testified that Luz James never explained to her what debts FBI owed relative to its purchase of the stations. (Tr. 102)

40. In response to issue (c) in the *MO&O/HDO*, Ms. James-Petersen testified in February 2003:

I am unaware of any situation in which I misrepresented the facts or lacked candor with the FCC at any time, and I put the Enforcement Bureau to its proof on this issue. (FBI Ex. 2, p. 1)

41. In connection with the transfer of control applications, Ms. James-Petersen testified in March 2001:

My father paid \$525,000 for Stations WSTX AM and FM. In the intervening years since he bought the stations, a series of hurricanes have wrecked havoc on the Virgin Islands. With each hurricane, more and more retail businesses have been destroyed and fewer and fewer advertisers have been available to support the stations. Nevertheless, the stations constitute the only valuable asset held by my father for the benefit of his children and grandchildren. (FBI Ex. 1, p. 2)

42. At the hearing, Ms. James-Petersen acknowledged that, contrary to her claim that the stations are the only valuable asset held by her father for the benefit of his children and grandchildren, her father and/or her mother own several pieces of real estate on St. Croix, including the family home, as well as the developed property immediately adjacent thereto, and that she had “always” known about most of them. (Tr. 124-25) Ms. James-Petersen’s explanation for having represented that the stations were the only valuable asset was that she “was referring to businesses as opposed to real property that [her] parents owned.” (Tr. 126) Ms. James-Petersen acknowledged that her parents intended to will the properties to their children and grandchildren. (*Id.*)

43. In response to issue (d) in the *MO&O/HDO*, Ms. James-Petersen testified in February 2003:

I am unaware of any circumstances between July of 1998 and the present time in which I was personally responsible for any willful or repeated operation of Station WSTX(AM) or WSTX-FM at variance from the terms of their licenses. (FBI Ex. 2, p. 1)

44. According to Luz James, Ms. James-Petersen did not have the responsibility to correct the matters at the station found deficient by Agent Jusino in 1997. (EB Ex. 5, p. 162) However, as noted in paragraph 21, *supra*, Ms. James-Petersen was the stations' General Manager when Agent Jusino inspected Stations WSTX(AM) and WSTX-FM in September 1998 and informed her that both stations were operating at substantial variance from their authorized parameters. (EB Ex. 1, pp. 3-4) Ms. James-Petersen testified that Agent Jusino told her that there were "some things that needed to be rectified," although she could not recall what they were. (Tr. 136) Ms. James-Petersen acknowledged that Agent Jusino was "very pleasant," that they conversed "for hours" about what FBI needed to do to come within compliance, and that she understood that both stations were operating substantially under their authorized power. (Tr. 138) Nonetheless, when Agent Jusino again inspected the stations in April 2000, he found that no improvements had been made. Indeed, Agent Jusino found that Station WSTX(AM) was even more out of compliance than it had previously been, while the situation with Station WSTX-FM had remained unchanged.¹⁸ (EB Ex. 1, pp. 4-5) In her testimony, Ms. James-Petersen acknowledged that she had not taken any steps either to have the stations operate at their licensed power or to obtain STAs. (Tr. 142)

¹⁸ The Bureau acknowledges that Hurricane Lenny had caused some damage to Station WSTX(AM) when it passed through the United States Virgin Islands in November 1999 (Tr. 123, 140) and that Luz James had undergone heart surgery in January 2000. (Tr. 156) Nonetheless, Ms. James-Petersen, as General Manager, had done nothing to improve the stations' operating situation since becoming General Manager in July 1998. (Tr. 142)

45. Ultimately, FBI obtained STAs to operate the stations at variance with their authorizations. (EB Ex. 2, pp. 90-93) Commission records reflect that STAs have either been granted to or requested by FBI since May 2000.¹⁹

46. In response to issue (e) in the *MO&O/HDO*, Ms. James-Petersen testified in February 2003:

I am unaware of any circumstances in which I, personally, caused FBI to willfully or repeatedly violated [sic] the Commission's Rules by failing to respond to official correspondence and inquiries from the time period of July of 1998 until the present time. Prior to my being made president in March of 2001, I delivered some correspondence from the FCC to my father, but at the time I had no responsibility with respect to that correspondence and left it up to him to answer such correspondence. (FBI Ex. 2, p. 1)

47. At the hearing, Ms. James-Petersen testified that she had not been aware of the December 1997 correspondence (the NOV's) sent by Agent Jusino to her father. (Tr. 135) Ms. James-Petersen testified that the stations' facsimile machine is located in Mr. Clarke's cubicle, which is open to anyone at the stations. (Tr. 148-49) FBI also received Commission NOV's dated May 1, 2000. (EB Ex. 2, pp. 15, 76-81; EB Ex. 3, p. 9) However, Ms. James-Petersen claimed that she gave the WSTX(AM) NOV to Luz James, "thinking that he would take care of it."²⁰ (EB Ex. 3, p. 9) FBI did not respond to the NOV's. (*Id.*) Although Ms. James-Petersen admitted that she received a copy of the Bureau's July 19, 2000, letter of inquiry which had been addressed to Luz James, she claimed in her testimony that she gave the letter to Luz James and assumed that he would take care of the matter. (EB Ex. 2, pp. 17, 94-97; EB Ex. 3, p. 10) FBI never responded

¹⁹ Official Notice requested.

²⁰ No similar claim is made with respect to the NOV for WSTX-FM, which called for a written response within 10 days. (See EB Ex. 2, p. 81; EB Ex. 3, p. 9)

to the Bureau's letter. (EB Ex. 2, p. 17; EB Ex. 3, p. 10)

48. In response to issue (f) in the *MO&O/HDO*, Ms. James-Petersen testified in February 2003:

I will operate WSTX AM and FM independently of any control or influence from Gerard Luz A. James and Asta K. James. (FBI Ex. 2, p. 2)

49. As discussed above, Ms. James-Petersen resides at the home of her parents, Luz and Asta James. (*E.g.*, Tr. 150-51) She stores some of the stations' documents at her parents' home. (Tr. 87-89) Ms. James-Petersen's parents provide, among other things, shelter and meals for her and her children, pay for some or all of the children's health care, pay the stations' expenses when the stations' income is insufficient, and provide Ms. James-Petersen with a car. (Tr. 101, 157-58, 162-63) Ms. James-Petersen does not receive a salary or any benefits from FBI. (EB Ex. 4, pp. 47-48; Tr. 160-61) Ms. James-Petersen has repeatedly acknowledged that her father, Luz James, is "headstrong," "hardheaded" and a "male chauvinist." (EB Ex. 9, pp. 11, 56; Tr. 131)

50. With respect to programming, Luz James has performed in an on-air position at the stations four days a week since November 2003. (Tr. 91) According to Ms. James-Petersen, the older members of the stations' audience "love when he's on" and they will call the stations and inquire about him when he is off the air. (Tr. 154)) His time on the air has increased since 2001, when, according to Ms. James-Petersen, he served only as a fill-in announcer. (EB Ex. 4, p. 56) The stations' format has been constant over at least the last five years, and FBI has charged a reduced airtime rate to a specific category of programmers since it assumed control of the stations. (Tr. 92-94; EB Ex. 5, pp. 65-74)

51. FBI's operating income is not always sufficient to meet the stations' expenses. (Tr. 94) Luz James and Mrs. James provide money to pay the stations' expenses as

needed. Mrs. James will ask Ms. James-Petersen “what is scheduled to be paid, what is outstanding.” (Tr. 95) She acknowledged that “when we fall behind, then, you know, she [Mrs. James] would step in and she would assist.” (*Id.*) Luz James also assists with FBI’s expenses. (Tr. 96) Specifically, Luz James has provided his retirement checks and, sometimes, his Social Security check, to assist in meeting the stations’ payroll. (Tr. 97-98) Luz James will ask Ms. James-Petersen if she has enough money, and, if she does not, he deposits his money into the stations’ account. (Tr. 98-99) Ms. James-Petersen has also used her father to sell the stations’ commercial time. (Tr. 155-56) Although Ms. James-Petersen testified that it was her intention ultimately to move the stations’ checking account to a different bank and to specify herself and Luz James, Jr. as the account’s only authorized signers, she acknowledged that her parents still have signature authority on the stations’ current checking account. (EB Ex. 9, pp. 204-05)

52. In response to issue (g) in the *MO&O/HDO*, Ms. James-Petersen testified in February 2003:

I have sufficient financing and managerial capacity to insure enclosure with an effective locked fence of the WSTX(AM) antenna. There have never been any holes or breaches in the fence since I was made president.” (FBI Ex. 2, p. 2)

53. During his September 1998 and April 2000 inspections of Stations WSTX(AM) and WSTX-FM, Agent Jusino discovered openings in the fence that surrounded the WSTX(AM) antenna. (EB Ex. 1, pp. 4-5) According to Ms. James-Petersen, she caused the fence to be repaired each time. (Tr. 141-42; EB Ex. 4, p. 55)

54. In response to issue (h) in the *MO&O/HDO*, Ms. James-Petersen testified in February 2003:

I have sufficient financing and managerial capacity to insure the installation and maintenance of proper EAS equipment for Stations WSTX AM and FM. Since I have been made president, the EAS equipment had been in continuous operation and there have been no further malfunctions in that equipment. (FBI Ex. 2, p. 2)

Ms. James-Petersen also testified that, as of the hearing, the stations' EAS equipment was in good operating order. (Tr. 181)

55. As noted above in paragraph 23, Agent Jusino found during his September 8, 1998, inspection of the stations that the EAS equipment was installed, but that it had not been operating properly since July 17, 1998. (EB Ex. 1, p. 3) Similarly, during his April 13, 2000, inspection of the stations, Agent Jusino again discovered that the stations' EAS equipment was malfunctioning, although Ms. James-Petersen related that she had called an engineer to fix the equipment. (*Id.*, p. 5) Although no further outages or malfunctions to EAS equipment have been reported, Mr. Clarke has observed that the stations' main building "constantly leaks," and, if the area experiences a major rain, "it's like you've got to wear an umbrella inside there." (EB Ex. 8, p. 56)

56. In response to issue (i) in the *MO&O/HDO*, Ms. James-Petersen testified in February 2003

Since I have become president, WSTX AM and FM have operated in accordance with the FCC's rules and the terms of their authorizations, as modified by outstanding STAs. I anticipate that will continue to be the case." (FBI Ex. 2, p. 2)

At the hearing, she testified that she did not know whether FBI was operating the stations pursuant to STAs, as she had left that "up to the attorneys to handle." (Tr. 146)

Commission records reflect that FBI obtained extensions of the STAs, which were valid

from June 12, 2000, through at least November 17, 2004.²¹

III. PROPOSED CONCLUSIONS OF LAW

57. Issues (a) and (f). Issues (a) and (f), although separate and distinct inquiries, essentially focus on the same subject, namely, who will guide FBI in its operation of the Stations WSTX(AM) and WSTX-FM, should the Commission grant the Transfer Applications. The Bureau submits that the evidence does not support the conclusion that Ms. James-Petersen will control FBI free of her parents' influence. Rather, it must be concluded that Luz and Asta James have had and will continue to have a significant influence on Ms. James-Petersen and on FBI's operation of the stations.

58. The record evidence provides a compelling picture of the many ways in which Luz and Asta James control or influence their daughter. Ms. James-Petersen lives with her parents in the home in which she grew up. Her parents provide her shelter, food, and a car. Luz and Asta James pay for some or all of the medical expenses of Ms. James-Petersen's son. Although Ms. James-Petersen testified that her husband also pays for her living expenses and those of their children, there is nothing in the record to suggest how much that contribution is, whether it matches or exceeds the amounts paid by Luz and Asta James, or whether Ms. James-Petersen could survive without her parents' financial

²¹ EB Exhibits 10 and 11 suggest that FBI did not have STAs from May 2003 through the hearing in March 2004. However, Commission records now reflect that FBI had sought STAs for both WSTX(AM) and WSTX-FM by letters dated May 23, 2003, which were ultimately granted on May 17, 2004, with an expiration date of November 17, 2004. Commission records further reflect that FBI sought STAs by letters dated March 14, 2005, and that the Media Bureau's Audio Division granted the STA for WSTX-FM by letter dated March 22, 2005, with an expiration date of September 22, 2005. The March 2005 STA explicitly did not cover the period between November 17, 2004 and March 2005. (Official Notice Requested) The Bureau has no information as to why the May 2003 STA requests did not appear in the Commission's CDBS system by March 17, 2004, when the Bureau downloaded the stations' application records that appear in EB Exhibits 10 and 11.

assistance. What is clear, however, is that FBI neither pays Ms. James-Petersen a salary nor provides her with any other financial benefit for her services at the stations. In short, the evidence demonstrates that Ms. James-Petersen is financially dependent on her parents.

59. The record also establishes that Liz and Asta James continue to have significant influence over the affairs of FBI. The business records for Stations WSTX(AM) and WSTX-FM are stored at their home, unsecured by any lock. Mail for FBI continues to be directed to a post office box that is accessible, not only by Ms. James-Petersen, but also by Luz James. Luz and Asta James still have signature authority on FBI's checking account, and they regularly inquire about FBI's business in order to provide financial assistance to pay bills or meet the company payroll.

60. The programming for Stations WSTX(AM) and WSTX-FM continues to be influenced by Luz James. During the autumn of 2001, although Ms. James-Petersen was at the family home, Luz James fired the stations' newsman. Luz James currently spends hours at the stations, primarily on Saturdays and Sundays, both doing his own show, as a board operator for certain pre-recorded and live programming, and, occasionally, as a salesman. Members of the stations' audience continue to act in a manner that underscores his continued influence: when he is away from the stations, listeners continue to inquire about him and his well being, as they miss him and want him back on the air. Significantly, with respect to certain programmers, notwithstanding FBI's acknowledged financial difficulties, the licensee adheres to Luz James's established policy of charging them a significantly lower rate for airtime than what it charges regular commercial programmers, ostensibly because Luz James wishes that the policy remain unchanged.

Finally, with respect to the stations' operations, Ms. James-Petersen has acknowledged that employees will still call her father even when she is present at the stations.

61. Although Ms. James-Petersen and her brothers are FBI's officers and directors, there is virtually no evidence that her brothers have any control over or desire to be involved in, much less control, FBI's affairs. Rather, they have left everything involving FBI up to Ms. James-Petersen. She, in turn, is subject to the overarching influence of her parents, particularly her father, who his daughter characterized in her testimony as hard-headed, extremely headstrong, a slick one, and a male chauvinist. Consistent with this candid characterization of him by his daughter, Luz James has acknowledged in his testimony that he controls his family.

62. In light of the foregoing, it must be concluded that FBI did not meet its burden of proof regarding issues (a) and (f). In *Petroleum V. Nasby*, 10 FCC Rcd 6029, 6033 (Rev. Bd. 1995), *remanded*, 11 FCC Rcd 3494 (1996) and *Faulkner Radio, Inc.*, 88 FCC 2d 612, 618 (1981), the Commission found that license renewal was appropriate only after concluding that the wrongdoers were going to be completely removed from station operations and that, in the case of the *Nasby* wrongdoer, he could no longer influence the licensee's affairs. Here, plainly, Luz James, the adjudicated wrongdoer, along with his wife, Asta, remain very much on the scene, continuing their involvement in many vital aspects of the stations' operations. They serve as the stations' bankers and record keepers, and Luz James appears to influence significantly, if not control, the stations' programming and other operational policies. Whether or not Luz and Asta James exercise *de jure* control of FBI, the record establishes that they do hold *de facto* control over the company and the operation of its stations, clearly controlling or significantly influencing many

aspects of the life of their daughter, Ms. James-Petersen. Consequently, issues (a) and (f) must be resolved against FBI.

63. Issue (b). Although somewhat murky, the record evidence most pertinent to issue (b) suggests that Luz and Asta James are FBI's largest creditors and the persons most likely to suffer should FBI's debt to them be extinguished. Although Ms. James-Petersen claims that her parents have waived any right to receive the money owed to them by FBI, FBI did not place in the record any such statements from Luz or Asta James to that effect. Given the state of the record on this matter and Ms. James-Petersen's continued financial dependence on her parents, her uncorroborated speculation of what her parents will or will not do regarding her receipt of any money from FBI is singularly unconvincing. Indeed, the record in this proceeding suggests that Luz and Asta James are doing what they can to keep FBI alive so that the James family – not just Ms. James-Petersen and her brothers – can ultimately benefit, should FBI be authorized to sell the stations. Simply stated, the Bureau submits that FBI did not introduce into the record sufficient evidence on this issue to warrant its resolution in FBI's favor. Consequently, issue (b) should be resolved against FBI.

64. Issue (c). The record evidence does not establish that Ms. James-Petersen misrepresented any facts or lacked candor with the Commission from July 1998 until March 2001 concerning the operation of Stations WSTX(AM) and WSTX-FM. The only person who responded to the Commission during that time concerning the operation of the stations was Luz James. Other Commission correspondence to FBI, including that directed to and personally handled by Ms. James-Petersen, went unanswered.

65. However, in March 2001, in connection with the Transfer Applications, Ms. James-Petersen signed a declaration representing, *inter alia*, that the stations were the only valuable assets held by Luz James for the benefit of his descendants. As the record evidence in this proceeding makes clear, that statement was flatly untrue and Ms. James-Petersen knew that it was untrue at the time that she made it. Consequently, although FBI can plausibly maintain that issue (c), as framed, may be resolved in its favor, it is also undeniable that Ms. James-Petersen lacked candor to the Commission in March 2001 in order to improve the chances for Commission grant of FBI's Transfer Applications.

66. Issue (d). Ms. James-Petersen has denied that she was personally responsible for any willful or repeated operation of the stations at variance from the terms and conditions of their licenses prior to March 2001. If her claim is accepted at face value, issue (d) should be resolved in FBI's favor. In this regard, consistent with Ms. James-Petersen's denial, she did not become FBI's President until March 2001, and the record does not establish that Luz James explicitly vested her with the authority needed to cause FBI to make the necessary station repairs.

67. However, the record evidence also reflects that Ms. James-Petersen returned to work at the stations following Luz James's agreement to reduce his role at the stations to that of a regular disc jockey. Ms. James-Petersen, as the stations' General Manager, accompanied Agent Jusino during both his September 1998 and April 2000 inspections, with Luz James only appearing briefly during the September 1998 inspection. Agent Jusino personally advised Ms. James-Petersen during both inspections that the stations were operating in a manner grossly at variance with their authorized parameters and that they were non-compliant in other respects. Following the inspections, Ms. James-Petersen

apparently took some steps to correct matters, at least with respect to the fence and EAS equipment.

68. Despite the time spent and effort made by Agent Jusino to inform Ms. James-Petersen as to what was wrong with the stations' antenna height and power and with the location of the Station WSTX-FM antenna, she took no steps to correct these deficiencies or to obtain STAs authorizing their actual operation, even during the times that her father was effectively out of the picture for months due to his heart problems and resulting surgery. Given her role as the stations' General Manager and the only James family member on site at the stations for months at a time, the Bureau submits that, in the absence of an express directive from Luz James that she not take corrective action, it is not unfair or inappropriate to fault Ms. James-Petersen, at least in part, for the stations' continued operation at variance with their authorized parameters prior to June 2000 when FBI finally obtained STAs to operate the stations at variance from their authorizations.²²

Consequently, issue (d) should be resolved against FBI.

69. Issue (e). An analysis similar to that employed to resolve issue (d) should be used in resolving issue (e), which relates to FBI's repeated failure to respond to Commission correspondence. According to Ms. James-Petersen, she gave Luz James the May 1, 2000, NOVs and the July 19, 2000, letter of inquiry, with the asserted

²² The Bureau recognizes that the Commission generally finds responsible and imposes sanctions only on the regulated entity itself, not on that entity's employees, even when those employees ignore or flout long-standing company policies. *See SBC Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 19091, 19118-19, ¶ 75 and nn. 94-96 (2001), *NAL canceled by Consent Decree*, 17 FCC Rcd 10780, 10786 (2002). However, the distinction between a broadcast licensee and its employees is certainly blurred here when the employee under scrutiny is the stations' General Manager, the adult child of the controlling licensee principal, and the proposed controlling principal of the reconstituted licensee.

understanding and expectation that he would respond to them. He did not do so, and, as the licensee's President and principal shareholder, he was properly found responsible and FBI was held accountable by the Commission.²³ However, as to whether Ms. James-Petersen, in her capacity as General Manager, should also be found responsible, the Bureau notes, as it did with respect to issue (d), that Ms. James-Petersen returned to the stations in 1998 following Luz James's agreement to reduce his role to only a staff disc jockey. Consistent with his reduced role, it was Ms. James-Petersen who accompanied Agent Jusino during both the 1998 and the 2000 inspections, informing him on both occasions that she was the stations' General Manager. Moreover, during the 2000 inspection, she told Agent Jusino that she and her brothers would soon be taking over operation of the stations.

70. In light of the foregoing, it is reasonable to expect that Ms. James-Petersen would have done a good deal more than simply hand the correspondence to her father (then purportedly only a disc jockey) and assume that he would take care of the matters required of FBI by that correspondence. Indeed, at a minimum, in light of her pivotal role as FBI's representative during the inspections conducted by Agent Jusino, Ms. James-Petersen should have assured herself that FBI responded to the Commission, and, in the absence of such assurance, she should have contacted Agent Jusino and the Bureau to request additional time for FBI to submit responses. Having done neither, Ms. James-Petersen is culpable for FBI's failings here. Consequently, issue (e) should be resolved against FBI.

²³ See *MO&O/HDO*, 17 FCC Rcd at 6188-89, ¶ 28. See also *OSC*, 16 FCC Rcd at 4336, ¶ 16.

71. Issue (g). This designated issue concerns Ms. James-Petersen's prospective financial and managerial ability to ensure enclosure of Station WSTX(AM)'s antenna within a locked fence. Although Agent Jusino twice found openings in the fence that was to have enclosed the AM station's antenna during Ms. James-Petersen's tenure as General Manager, it appears that she repaired the fence after each inspection. Ms. James-Petersen has also represented that there have been no holes in the fence since she became President of FBI. Absent any information to the contrary, the evidence supports resolution of issue (g) in FBI's favor.

72. Issue (h). As does issue (g), this issue calls for a predictive judgment. However, in contrast with the record evidence concerning the fence, *that regarding* FBI's future installation and maintenance of operational station EAS equipment raises significant questions as to whether the licensee will comply with this Commission requirement. In this regard, although Ms. James-Petersen has unequivocally declared that the stations' EAS equipment has been in continuous operation since she became President of FBI and that, as of the hearing, the equipment was in good operating order, the record also reflects that the building which houses this stations' equipment constantly leaks. Absent a move of or substantial repairs to the stations' common main studio, neither of which appears likely given FBI's precarious financial condition, it is only a matter of time before water damage is likely to lead to another malfunction of the EAS equipment. The Bureau submits that the record established by FBI is insufficient to warrant resolution of issue (g) in its favor.

73. Issue (i). This issue seeks to determine whether FBI, under Ms. James-Petersen's direction and control, will operate the stations in accordance with the Act, the

rules, and the respective station authorizations. Although Agent Jusino's September 1998 and April 2000 inspections uncovered significant operational deficiencies at both stations, the record reflects that, beginning in May 2000, the stations have obtained, and operated pursuant to, STAs through November 17, 2004.²⁴ Thereafter, although FBI apparently did not operate pursuant to STAs, there is nothing in the record that shows operation contrary to the stations' authorizations. Consequently, nothing in the record, as updated, contradicts Ms. James-Petersen's testimony that she will operate the stations in a compliant manner. Accordingly, issue (i) should be resolved in FBI's favor.

IV. ULTIMATE CONCLUSION

74. Issue (j). In determining that summary decision against FBI was inappropriate with respect to the ultimate issue of whether the licenses for Stations WSTX(AM) and WSTX-FM should be revoked, the Commission stated that the Bureau "must demonstrate by record evidence that individual(s) responsible for Family's conceded wrongdoing will either continue to influence the licensee or will receive an improper benefit if the transfer of control is authorized...."²⁵ At the same time, however, the *MO&O/HDO* assigned the burden of proof on this and the other issues to FBI, requiring it to demonstrate, by a preponderance of the evidence, that grant of the transfer of control applications will serve

²⁴ See EB Exs. 10 and 11. However, as noted earlier, Commission records now reflect that FBI filed extensions requests for its STAs in May 2003 and again in March 2005. Curiously, FBI did not point out the May 2003 filing or otherwise oppose the Bureau's post-hearing motion to add EB Exhibits 10 and 11 to the record in this proceeding. In any event, as also previously noted, current Commission records indicate that FBI's STAs expired November 17, 2004, although a new STA was accorded to WSTX-FM on March 22, 2005. There is no record evidence as to whether FBI operated its stations in accordance with their respective authorizations at other times.

²⁵ *MO&O/HDO*, 17 FCC Rcd at 6190, ¶ 32.

the public interest.²⁶ To do so, FBI must demonstrate that it will not be influenced or controlled by Luz James, that Ms. James-Petersen will operate the stations free of any control or influence from her parents, and that Ms. James-Petersen was not culpable of wrongdoing during her tenure as the stations' General Manager. FBI has failed to meet its burden.

75. As explained at length above, the record clearly establishes that Luz James, the individual primarily responsible for FBI's conceded wrongdoing, will continue to influence the licensee's operations. He continues to be physically present at the stations from two to four times a week, usually for his own radio program, but also, on occasion, for the purpose of selling commercial time for the stations. The stations' business records are stored at his home, and the stations' mail is delivered to a post office box for which he has a key. Policies regarding charges to different classes of programmers appear set in stone because Luz James wishes them to be so.

76. Also, the record reveals that Ms. James-Petersen, the stations' General Manager since July 1998, is heavily dependent upon her parents, Luz and Asta James, both for her personal expenses and for those of the stations. Ms. James-Petersen does not receive a salary or benefits from FBI. Instead, her parents provide her and her children with shelter, food, transport and the payment of their medical expenses. Whenever the stations' income is not sufficient to meet expenses, Luz and/or Asta James pays the bill or meets the payroll from his or her own funds. Such dependence leads to the inescapable conclusion that Ms. James-Petersen cannot operate the stations without the assistance of her parents.

²⁶ *Id.*, 17 FCC Rcd at 6190, n. 33.

77. In light of Ms. James-Petersen's characterization of her father's dominating personality (*e.g.*, extremely headstrong and a male chauvinist) and his pattern of behavior fully consistent with this description, the Commission cannot expect him to now passively observe his daughter's operation of FBI's stations, particularly since the record also reflects his strong emotional attachment to the stations. Particularly telling in this regard is Luz James's own assertion that, when it comes to family, he controls his family. Given these circumstances and the historical operating relationship between Luz and Asta James and their daughter, reliance upon the proposed transfer of control of FBI from them to Ms. James-Petersen and her siblings as an event that will remove Luz James from the stations' operations is totally contradicted by the record. Indeed, the record demonstrates that Luz James will not end his dominant role in the affairs of the stations if his children acquire the legal right to solely control and operate FBI through the proposed transfer of control. Accordingly, granting the pending Transfer Applications would make a mockery of the both Commission's enforcement regimen, which is designed to ensure that broadcast licensees operate their stations in accordance with the Act, the Commission's rules, and the terms of their authorizations, and its directive here that the proposed transfer of control be approved only upon a showing by FBI that those individuals who will have not complied with that obligation be removed from control over the licensee.

78. Finally, to the extent that the record focuses on Ms. James-Petersen's stewardship, the Commission cannot confidently conclude that she will operate the stations in accordance with the rules. As General Manager (before she became FBI's President), she made virtually no effort to ensure that FBI responded to official Commission correspondence. It required two inspections before the AM station's radiator

was completely enclosed by a fence, and it took the same two inspections before the stations had consistently functioning EAS equipment. Perhaps most significantly, in an apparent ploy to elicit sympathy for her family, Ms. James-Petersen falsely represented to the Commission that the stations were the only valuable asset that Luz James could pass on to his descendants. In short, FBI has not shown that transferring control of FBI to Ms. James-Petersen and her brothers will serve the public interest.

79. Whether under the legal control of Luz James or his daughter, Ms. James-Petersen, FBI has failed to demonstrate that its continued status as licensee of the stations will serve the public interest. Indeed, the record is replete with evidence to the contrary. For this reason, FBI's transfer of control applications should be denied, and the licenses for Stations WSTX(AM) and WSTX-FM revoked.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James W. Shook", with a stylized, flowing script.

William D. Freedman
Deputy Chief, Investigations and Hearings Division
James W. Shook
Special Counsel
Enforcement Bureau

Federal Communications Commission
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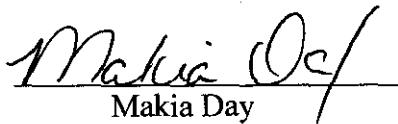
April 4, 2005

CERTIFICATE OF SERVICE

Makia Day, a staff assistant in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 4th day of April, 2005, sent by first class United States mail or by hand copies of the foregoing "Enforcement Bureau's Proposed Findings of Fact and Conclusions of Law" to:

Daniel A. Huber, Esquire
560 N Street, S.W., Suite 501
Washington, D.C. 20024

* Chief Administrative Law Judge Richard L. Sippel
Federal Communications Commission
445 12th Street, S.W., Room 1-C768
Washington, D.C. 20054


Makia Day

* delivery by hand